FILED
AUG 16 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 321

IVA LUX,

Petitioner,

vs.

PEOPLE EX REL HARLOW MILLER, COUNTY TREASURER AND EX OFFICIO COUNTY COLLECTOR OF LASALLE COUNTY, ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois.

PETITION FOR WRIT OF CERTIORARI

ANDREW J. O'CONOR
Central Life Building
Ottawa, Illinois
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

TABLE OF CONTENTS

	PAGE
Opinion Below	2
Jurisdictional Statement	2
Questions Presented	2
Constitutional Provisions and Statutes Involved	4
Statement of the Case	8
Reasons for Granting the Writ	23
I. Once an assessment of property for taxation has been made, then due process of law requires notice and an opportunity to be heard before the assessment can be increased	23
The action of the Board of Review materially and adversely affects the tax levied on petioner's property	32
II. The Board of Review of LaSalle County, Illinois is a statutory board and has only such authority as is expressly granted to it by statute. Any actions beyond the scope of its authority are void and deprive the taxpayers of their property without due process of law	33
Conclusion	34
Appendix A	37
Appendix B	52

Table of Authorities

Cases

PAGE

Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441, 36 Sup. Ct. 141, 60 L. ed. 372 29

Central of Georgia Railway Co. v. Wright, 207 U.S. 127, 52 L. ed. 134 .....26, 28

Dietman v. Hunter, 5 Ill. 2d 486, 126 N.E. 228 28

Jessup v. Chicago & C.R. Co., Fed. case 7300 28

Railroad Tax Cases (1882), 8 Fawy. 238, 13 Fed. 722 Writ of Error dismissed in 116 U.S. 138, 29 L. ed 589, 6 Sup. Ct. 317 28

People v. Abraham, 295 Ill. 582, 129 N.E. 511 33

People v. Vail, 296 Ill. 61, 129 N.E. 494 33

People v. Chicago Lake Shore & Eastern Railway Co., 270 Ill. 477, 110 N.E. 720 33

People v. Keogh, 306 Ill. 323, 137 N.E. 816 33

People ex rel Ferguson v. Schlitz Transfer Co., 333 Ill. 333, 164 N.E. 702 .....33, 34

People ex rel Shirk v. Glass, 9 Ill. 2d 302, 137 N.E. 2d 265 33

Weber v. Baird, 208 Ill. 209, 70 N.E. 231 33

Constitutional Provisions

Constitution of the United States
Amendment XIV, Sec. 1 4

Statutes

PAGE

Ill. Rev. Stat. 1957, Chap. 120, par. 511 4

Ill. Rev. Stat. 1957, Chap. 120, par. 483 5,23

Ill. Rev. Stat. 1957, Chap. 120, par. 576 5

Ill. Rev. Stat. 1957, Chap. 120, par. 584 ..... 6, 23

Ill. Rev. Stat. 1957, Chap. 120, par. 588 6

Ill. Rev. Stat. 1957, Chap. 120, par. 589 (4) 6, 24

Ill. Rev. Stat. 1957, Chap. 120, par. 589 (5) 7, 24

Ill. Rev. Stat. 1957, Chap. 120, par. 524 ..... 4, 23

Miscellaneous

12 Am. Jur. "Constitutional Law", Sec. 642 25

24 A.L.R. 331, Annotation, 333, 339, 340 ..... 25, 29

84 A.L.R. 97, Annotation, p. 198 and 202 26

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

IVA LUX,

Petitioner,

VS.

PEOPLE EX REL HARLOW MILLER, COUNTY TREASURER AND EX OFFICIO COUNTY COLLECTOR OF LASALLE COUNTY, ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Iva Lux, respectfully prays that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court entered in this cause in *People ex rel. Harlow Miller, County Treasurer of LaSalle County, Illinois* v. *John Doe et al., Iva Lux*, No. 36184 on May 19th, 1961, which affirmed the judgment of the County Court of LaSalle County, Illinois entered on June 15th, 1960.

Opinion Below.

The opinion of the Supreme Court of Illinois is appended hereto as Appendix A. It has not yet been printed in the Ill. Official Reports. It appears in the N.E. Reports at 174 N.E. 2d 830.

Jurisdictional Statement.

The opinion and judgment of the Supreme Court of Illinois, affirming the judgment of the County Court of LaSalle County, Illinois, were filed and entered on May 19th, 1961 (Appendices A and B hereto pp. 37, 52). The judgment became final on that date.

The jurisdiction of this Court is invoked under Sec. 1257 (3), Title 28, U. S. Code, providing for review by this Court by Certiorari of decisions of the highest court of a State wherein a title, right, privilege or immunity is specially claimed under the Constitution or Statutes of the United States.

Questions Presented.

The Board of Review of LaSalle County, Illinois, made what purported to be a horizontal rise of the assessed value of real estate in Bruce Township, LaSalle County, Illinois for tax purposes for the quadrennial period commencing in 1958. Prior to making the increase, it published a notice required by Illinois law, that it would hold a public hearing on a certain date for the purpose of considering an increase of the assessments of all real estate in Bruce Township by 120% and an increase of the assessment of all personal property in Bruce Township, other than passenger automobiles, trucks, busses, trailers and capital stock by 120%. The hearing was held on the day specified and the Board of Review entered an order increasing the assessment on all real estate lots by 120%, increasing the

assessment on all real estate farm lands by 110% and increasing the assessment on all personal property by 120%, excepting therefrom all passenger automobiles, trucks, busses, trailers, capital stock, grain, hay and livestock. Thereafter without holding any further hearing or giving any further notice, to the taxpayers, of any kind, or without changing the above order in any way, the Board of Review increased the assessments of a large amount of industrial property, commercial property, residential property, and farm lands in Bruce Township by 110% while it increased a large amount of other similar industrial property, commercial property and residence property by 120%. This action of the Board of Review presents the following questions:

(1) Does the action of the Board of Review of LaSalle County, Illinois, in increasing the assessments of property for taxation in Bruce Township in a manner substantially different than that specified in its order made after a notice and public hearing, constitute an increase in individual assessments without notice or without opportunity to be heard by the taxpayers involved so as to deprive them of their property without due process of law?

(2) Where the State law requires a notice to be published in a newspaper and a public hearing to be held, before making a horizontal rise of all tax assessments in a particular taxing district, and the Board of Review after holding the public hearing and giving the public notice, enters an order for a horizontal rise, in the assessments of certain classes of property, then if it thereafter raises assessments without any further hearing or notice to taxpayers or without giving them any further opportunity to be heard, in a manner substantially different than that specified in the order, does this constitute a void rise in assessments which deprives taxpayers of their property without due process of law?

Constitutional Provisions and Statutes Involved.

The Constitution of the United States, Amendment XIV, Sec. 1, which provides in part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ill. Rev. Stat. 1957, Chap. 120, par. 511, provides as follows:

> "Quadrennial assessment of real property-Permanent real estate index number system. No. 30. All real property subject to taxation under this Act, including real estate becoming taxable for the first time, shall be listed by the proper legal description in the name of the owner thereof by such owners or persons required by law, or their agents, or the officers provided by law, and assessed for the year 1954 or 1955, as provided in Section 43, and every fourth year thereafter, and also in any year in which the Department orders a reassessment (to the extent such reassessment is so ordered), with reference to the amount owned on April 1 in the year in which the same is assessed, including all property purchased on that day. Such assessment, as modified or equalized or changed as provided by law, shall be the assessment upon which taxes shall be levied and extended during the quadrennial period for which the same is made, . . ."

Ill Rev. Stat. 1957, Chap. 120, par. 524, provides as follows:

> "Assessments in quadrennial years. No. 43. On or before June 1, 1954, and every fourth year thereafter, in all counties having a population of less than 500,000 inhabitants, and as soon as he reasonably can in the

year 1955, and every fourth year thereafter, in all other counties, the assessor in person or by his deputy shall actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of April 1 of such year and assess the same at its fair cash value, setting down the sum in the proper column in the books furnished him.

In making such assessments he shall set down his valuation of improved tracts and lots in one column, and his value of unimproved tracts and lots in another column. The value of lands and improvements shall be separately fixed, and shall be set down in separate columns in said assessor's books."

Ill. Rev. Stat. 1957, Chap. 120, par. 483, provides as follows:

". . . in counties under township organization having less than 150,000 inhabitants, . . . the county treasurer shall be ex-officio supervisor of assessments in his county."

Ill. Rev. Stat. 1957, Chap. 120, par. 576, provides as follows:

"The supervisor of assessments shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made. Such changes by the supervisor of assessments in valuations returned by the township assessor shall be noted in a column provided therefor, and no change shall be made in the original figures.

All changes and alterations in the assessment of real property shall be subject to revision by the board of review in the same manner that original assessments are reviewed."

Ill. Rev. Stat. 1957, Chap. 120, par. 584, provides:

"In counties containing less than 500,000 inhabitants, as soon as the county assessor, supervisor of assessments or board of assessors, as the case may be, has completed the assessment he or it shall, in each year of a quadrennial assessment of real property, publish a full and complete list of the assessment of real and personal property, by townships if the county be so organized."

Ill. Rev. Stat. 1957, Chap. 120, par. 588, provides:

"In counties containing less than 500,000 inhabitants, the board of review may meet at such times as it deems necessary for appointing a clerk, supervising and directing him in his duties, prescribed in this Act, and shall meet on or before the third Monday in June in each year for the purpose of revising the assessment of property as provided for in this Act."

Ill. Rev. Stat. 1957, Chap. 120, par. 589 (4), provides:

"On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. . . . The board may also of its own motion, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any individual or corporation, on real property or personalty, making changes in the valuation thereof as may be just, and shall have full power over the assessment of any individual or corporation, and may do anything in regard thereto that it may deem necessary to make a just assessment; but no assessment shall be increased until the person or corporation to be affected shall have been notified, and given an opportunity to be heard, except as hereinafter provided."

Ill. Rev. Stat. 1957, Chap. 120, par. 589 (5), provides the Board of Review may,

> "Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein, if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have published a notice in a newspaper of general circulation published in the county, of such proposed increase and shall have given the owners of the property affected, or any one representing them, or other citizens of said territory, an opportunity to be heard within 20 days after the date of such publication."

Statement of the Case.

An appeal was taken from a judgment of the county court of LaSalle County, Illinois, over-ruling the tax objections of the petitioner, Iva Lux, in the annual tax suit brought by the county treasurer and ex officio county collector of LaSalle County, Illinois to collect the taxes for the year 1958. Petitioner, Iva Lux, was one of 1150 tax objectors from Bruce Township, LaSalle County, Illinois, all of whom paid their taxes under protest and made the same objections in the County Treasurer's tax suit (Rec. 1). The Board of Review of LaSalle County, Illinois, purported to apply a multiplier to tax assessments of Bruce Township as revised by the Supervisor of Assessments, and as revised by the Board of Review itself on individual hearings (Rec. 56). It increased the assessment of a large number of properties in Bruce Township by 120%. A large number of other assessments in the township were increased by 110%. At least one large assessment of industrial property was not raised at all. The assessment of petitioner, Iva Lux, was increased by 120% (Rec. 11-12). She contends herein that the increase in her assessment as made by the Board of Review is illegal and void and that the portion of her tax resulting from the illegal increase is void. Since all of the tax objections are the same and raise the same questions, the County Court of LaSalle County has withheld action on the other objections until the outcome of this case, and it has been stipulated that the other objections shall be determined by the result of this case. The total taxes paid under protest amount to $475,000.00 and it is contended that about $80,000.00 of this amount is illegal and void. Both in the lower court and in the Supreme Court of Illinois, Iva Lux, the peti-

tioner, and the other taxpayers specifically contend that the raise in assessed value of their properties deprived them of their property without due process of law in violation of the XIV Amendment to the United States Constitution.

In the quadrennial assessment year of 1958, Adam Crone, the duly qualified and elected Assessor of Bruce Township, LaSalle County, Illinois, made his assessment of all real estate and personal property in Bruce Township (People's Exhibits 1, 2, 3; Rec. 79). He properly signed his Assessment Books and filed them, as required by law, with the Board of Review of LaSalle County. The Supervisor of Assessments reviewed the assessments of the Assessor and changed a very small number of assessment in the Township (People's Exhibits 1, 2, and 3; Rec. 79). The total assessed value of all real estate in Bruce Township after all changes were made by the Supervisor of Assessments, was $33,616,450.00 (Rec. 7). The total assessed value of all personal property in Bruce Township, after all changes were made by the Supervisor of Assessments was $9,995.510.00 (Rec. 10-11).

After the changes were made by the Supervisor of Assessments, publication was duly made in the Streator Daily Times Press, on February 21, 1959, showing the assessed value of each piece of property in Bruce Township. The valuation for each piece of property published was the valuation placed thereon by the Assessor as changed by the Supervisor of Assessments, in any case where any such change was made. The taxpayers were notified by the publication that if they had any objections to the amount at which their property was assessed they could appear before the Board of Review of LaSalle County on or before a certain date, and make objection thereto (People's Exhibit 6, Rec. 86).

Thereafter the Board of Review heard complaints on individual objections and as a result thereof, changed a very small number of assessments compared to the total number of assessments in the Township (People's Exhibits 1, 2 and 3; Rec. 79).

On March 25th, 1959, April 1st, 1959 and April 8th, 1959 the Board of Review caused a Notice to be published in the Streator Daily Times Press which was as follows:

"State of Illinois,
County of LaSalle—ss.

NOTICE

To: Owners of Real and Personal Property In Bruce Township, LaSalle County, Illinois.

Notice Is Hereby Given that the Board of Review of LaSalle County, Illinois proposes to increase the assessment of certain classifications of personal property in Bruce Township, LaSalle County, Illinois, for the year 1958, and proposes to increase the assessment of all real estate, including improvements, in Bruce Township, LaSalle County, Illinois, for the quadrennial period beginning with the year 1958, by multiplying each and every assessment of the following classes by multipliers, in the amounts as hereinafter respectively set forth:

Classifications	Multiplier
All Real Estate	1.20
All Personal Property, other than Passenger Automobiles, Trucks, Busses, Trailers and Capital stock.	1.20

Notice Is Further Given that the owners of property affected or anyone representing them, or other citizens of said Township may appear and be heard before the Board of Review of LaSalle County, Illinois, in the Courthouse in Ottawa, Illinois, at 10:00

o'clock A.M. on Monday, the 13th day of April, 1959, at which time a hearing will be held by said Board of Review, concerning said proposal.

Mark Bowen
Chairman of the Board
of Review of LaSalle County, Illinois

Dated at Ottawa, Illinois the 23rd day of March, 1959." (People's Exhibit 5c, Rec. 54).

The records of the Board of Review show that a hearing was held on April 13th, 1959 pursuant to the notice, and the following written order was signed by the members of the Board of Review and incorporated into the records of the Board:

"On the 13th day of April, 1959, at 10:00 A.M., the Board of Review held a public hearing pursuant to publication of notice duly made on March 24, April 1, and April 8 in the Board of Review Rooms in the Court House at Ottawa, concerning proposed increase of 20% in the assessment for the quadrennial assessment period beginning with the year 1958, on all lands and lots including improvements, and all personal property other than trucks, passenger automobiles, busses, trailers and capital stock in Bruce Township.

Subsequent to the aforesaid hearing, the Board of Review studied all of the data, material and information, submitted, and considered the arguments and figures tendered by any and all interested taxpayers present at said hearing. Having therefore considered this evidence as well as other evidence heretofore collected, the Board of Review adopted the following formula which became the official decree of the Board to wit:

The present assessment for Bruce Township for the quadrennial assessment period beginning with the year 1959 as certified by the Supervisor of Assessments and adjusted by the Board of Review shall be increased by 20% on all lots, including improvements and shall be increased by 10% on all farm lands in-

cluding improvements; and the present assessment of Bruce Township certified by Supervisor of Assessments and adjusted by Board of Review shall be increased by 20% on all personal property provided such increase shall not apply to the present assessment as certified by the Supervisor of Assessments and adjusted by Board of Review on all passenger automobiles, trucks, busses, trailers, capital stock, grain, hay and livestock.

Respectfully submitted
Bowen
Healy
Duncan
Attest: Eleanor Nolan, Clerk."

(People's Exhibit 5f, Rec. 56).

At the hearing of this case in the County Court the people made a Motion to amend this order of the Board of Review by changing the words "farm lands" wherever they appeared in the order and to insert in lieu thereof "lands". The State's Attorney stated that the purpose of his Motion was to clarify the record and correct the Order to read as it was intended to read (Rec. 48). Francis Duncan, one of the members of the Board of Review, testified that the order was written up in the State's Attorney's Office at the direction and request of the Board of Review. After the order was prepared and written the Board discussed it during their entire morning session and it was signed in the afternoon. The members of the Board read the order before signing it. Mr. Duncan saw the term "farm lands" in the order and signed the order knowing the term "farm lands" was in it (Rec. 47). The court denied the motion to amend the order holding that all of the members of the Board of Review knew full well what it was and what it meant at the time they signed it and that it is a public record which must be respected (Rec. 49).

The Assessor's books for Bruce Township consist of 3 volumes and are introduced in evidence as People's Exhibits 1, 2 and 3. Each parcel of real estate in Bruce Township is shown therein and each parcel is designated by a Plate Number. Plate Numbers in the 3 books are numbered from 1 to 8,018 inclusive (People's Exhibits 1, 2 and 3; Rec. 79). In some cases there are sub-numbers such as 187A, 187B, etc. so that there are a few more than 8,018 tracts listed. Plate Numbers 1 to 287 inclusive consist of 406 individual tracts shown in Book 1, including those given sub-numbers. These 406 tracts are given the designation "lands" (People's Exhibit 1, Rec. 79). This consists of all of the real estate in the Township which is not platted into lots both inside and outside the City of Streator, and includes farm lands, residential property, business property and industrial property. The remainder of the 3 books, being Plate Numbers 288 to 8,018 inclusive, are designated "lots" and consist of the properties inside of the City Limits of the City of Streator platted into lots and the properties outside of the City Limits of the City of Streator in the suburban area which have been platted as an addition to the city (People's Exhibits 1, 2 and 3, Rec. 79).

The City of Streator is a municipal corporation located partially in Bruce Township, LaSalle County, Illinois, partially in Eagle Township, LaSalle County, Illinois, partially in Otter Creek Township, LaSalle County, Illinois and partially in Reading Township, Livingston County, Illinois (Rec. 10). It has a population of approximately 15,000 to 16,000 people (Rec. 10). Surrounding the City of Streator and outside of the city limits, but still located in Bruce Township, is a built up suburban area consisting of residence property, commercial property and industrial property with a population of approximately 3,000 to

4,000 people (Rec. 10). Outside of the suburban area in Bruce Township is an area of farm lands with a population of approximately 300 to 400 people. The total assessed value of all property, lands, lots and personal property of the City of Streator, located in Bruce Township after the Board of Review made the horizontal increase here attacked, is $42,274,790.00. The assessed value of that portion of the City of Streator living in Eagle Township is $1,956,410.00. The assessed value of that portion of the City of Streator lying in Otter Creek Township is $37,085.00. The assessed value of that portion of Streator lying in Reading Township, Livingston County is approximately $35,000.00. The total assessed value of all property, lands, lots and personal property of the City of Streator located in LaSalle County is $44,268,285.00. All of these figures are after the Board of Review took its action making the horizontal increase in assessments attacked in this case (Rec. 10).

School District No. 45 is the grade school district conducting grades 1 through 8 and includes that portion of the City of Streator located in LaSalle County in Bruce Township, Eagle Township and Otter Creek Township. It also includes other portions of Bruce, Eagle and Otter Creek Townships which are located outside of the City of Streator (Rec. 10). High School District No. 40 includes all of Bruce Township, both inside and outside of the City limits of the City of Streator, a large part of Eagle Township, both inside and outside the city limits of Streator, a large part of Otter Creek Township, both inside and outside the City of Streator, parts of Farm Ridge Township, Vermillion Township and Allen Township in LaSalle County, Illinois and parts of Sunbury Township in Livingston County, Illinois (Rec. 10).

The total assessed value of real estate in Bruce Township as made by the Assessor and as changed by the Supervisor of Assessments, but prior to the making of the disputed horizontal rise by the Board of Review, was $33,616,450.00 and the total assessed value of personal property in Bruce Township as made by the Assessor and changed by the Supervisor of Assessments was $9,995,-510.00 (Rec. 10).

The Board of Review did not apply the order entered by it to increase farm lands 110% and lots 120%. Instead of this it increased every tract of property in the "lands" section of the Assessor's Book by 110% regardless of whether the property was residential property, commercial property, industrial property or farm lands (People's Exhibits 1, 2 and 3, Rec. 79-85). In the "lands" section of the Assessor's Books there were a total of 406 tracts of property listed (People's Exhibit 1; Rec. 79). Of these, 182 tracts consisted of residential, business and industrial properties (People's Exhibit 1; Rec. 79). The remaining 224 tracts were farm lands (People's Exhibit 1; Rec. 79).

The People introduced in evidence the Bruce Township Assessor's Books for the quadrennial period 1954 to 1957 inclusive, as People's Exhibits 9 and 10 (People's Exhibits 9 and 10; Rec. 79-85). These Assessor's Books are prepared in the same manner as the Assessor's Books for the quadrennial period commencing in 1958. Each tract of land is given the same Plate Number in People's Exhibits 1, 2 and 3 for the quadrennial beginning in 1958 as it had in People's Exhibits 9 and 10 for the quadrennial beginning in 1954. Of the 224 tracts of farm land listed in the "lands" section of the Assessor's Books, the assessment for the year 1958 before the application of the disputed multiplier, was exactly the same as the assessment for

1957, the last year of the prior quadrennial excepting for 16 pieces of farm property in which some change from the assessment was made in the year 1958 (People's Exhibits 1, 2, 3, 9 and 10; Rec. 79-85). Of the 182 tracts in the "lands" section which were non-farm properties and consisted of residential property, business property and industrial properties, the valuation of 138 of these tracts was charged by the assessor in 1958 from what they had been in the previous quadrennial. Most of these changes were reductions of 10% in valuation (People's Exhibits 1, 2, 3, 9 and 10; Rec. 79-85). In the "lots" section of the Assessor's Books the valuations for 1958 were reduced by the Assessor by 10% in all but a few instances from what they had been in the previous quadrennial (People's Exhibits 1, 2, 3, 9 and 10, Rec. 79-85).

There are 153 residence properties in Bruce Township that were increased only by 110%. These properties are all similar to the residence of the objector. Some are located outside of the City of Streator, in Bruce Township, and some are located within the city limits of the City of Streator in Bruce Township. They have valuations comparable with the valuations of the residences in the City of Streator which were increased 120%. They vary on improved property from as low as $1500.00 or $1600.00 up to $30,000.00. Forty-four of the residence properties increased by 110% have valuations which are within $1000.00 of the valuation of this objector's property which was increased 120% (See testimony of Frank X. Neumann, Rec. 12). One of the properties which was increased 110% has exactly the same valuation placed thereon by the Assessor as the valuation placed on objector's property by the Assessor. This is the property of Russell Gambril, Plate No. 221 (Rec. 30, 44). Gambril's property is located just outside the city limits of the City

of Streator, Illinois, within one block of the city limits (See photo Objector's Exhibit 14; Rec. 74). It is an ordinary residence lot with a single family residence thereon, as is the objector's property. It was valued by the Assessor at $3420.00 exactly the same amount as the objector's property. Gambril's property is in a residence area in the Northwest portion of the City of Streator, surrounded by other residences. Objector's property was increased 120% and Gambril's property was increased 110%.

There are various instances where one residence property is increased 110% and other residence property right next door, or across the road, is increased 120%. Jay Comisky's property, Plate No. 149A and Mario Canale's property, Plate No. 149B, located on Marilla Park Road are each increased 110%. Other properties just across the road South are increased 110%. However, another group of residences on Marilla Park Road, just next door to the Comisky and Canale properties are increased 120% (Rec. 15). Pictures have been introduced in evidence showing these properties (Objector's Exhibits 1 and 2, Rec. 62 and 63). Out in the golf grounds area, many residence properties are increased 110% while other residence properties, right in the same area, are increased 120%. All of these properties are located in closely built up residence areas, both inside and outside the city limits of the City of Streator (Rec. 18-19).

In 2 cases one portion of the residence property is increased 120% while another portion of the same piece of property is increased only 110%. Rollin Moore owns a lot in Oak Hills Addition to Streator, which is increased 120%. The side yard which is a part of the very same piece of property, Plate No. 255B is increased 110% (Rec. 34). Francis Weaver owns a house and lot in Oak Hills Addition to Streator, which is increased 120%. A portion

of his side yard, which is a part of the very same piece of property, Plate No. 255C is increased only 110% (Rec. 34).

The assessed value of the 153 pieces of residence property increased 110% is $562,620.00 (People's Exhibits 1, 2, 3 and 12; Rec. 79-85). This is the amount of the Assessor's valuation as changed by the Supervisor of Assessments, in any such cases where a change was made, before the increase was made by the Board of Review. This is approximately 2% of the total valuation of all real estate in Bruce Township, including residence, commercial and industrial property. No figures are available to show the total valuation of residence property in the Township. However, there is a very large amount of commercial and industrial property. Therefore, it would be safe to infer from the evidence, that the residence property increased only 110% consists of more than 10% of the residence property in the Township.

We will now examine the action of the Board of Review with reference to commercial properties. The business properties in the business district in the City of Streator, were increased 120% (People's Exhibits 1, 2 and 3). The same type of properties in the suburban areas were increased only 110% (People's Exhibit 1, Rec. 79). In reviewing the types of property increased 110%, they embrace practically all of the types of business property in the city. It is apparent from the evidence that has been introduced and from the valuations of the properties themselves as shown in the Assessor's books that they are the same type of properties. The Pines (Plate 151), The White House (Plate 188), The Grove (Plate 217C) and The Gables (Plate 217D) are all very nice restaurants serving cocktails, located in the suburban areas. Three

of them also furnish entertainment in the evenings. They were increased only 110% (People's Exhibit 1; Rec. 79). Rokey's in the business district of the City is also a nice restaurant serving cocktails and furnishing entertainment with a similar type of building (Plate 919, Rec. 13). This was increased 120%. Several taverns in the suburban area were increassed only 110% (Plates 192, 193, 140, 187) while all of the taverns within the city limits were increased 120% (Plate 434). A drive-in movie on leased ground in the suburban area was increased 110% (Plate 140A) while the movie houses in the business district were increased 120% (Plate 517). Pine Towers Motel (Plate 151A) and the Town & Country Motel (Plate 200A) in the suburban area were each increased 110%. A similar motel in the City of Streator, the English Village Motel, was increased 120% (Plate 520B). Ligori's Junk Yard in the suburban area was increased 110% (Plate 186). Streator Scrap & Salvage, a similar property in the City of Streator was increased 120%. The Wayside Drug Store in the suburban area was increased 110% (Plate 187) while Goslin's Drug Store in the business district, was increased 120% (Plate 602). El Camino Liquor Store in the suburban area was increased 110% (Plate 187) while Community Liquors in the business district was increased 120% (Plate 550). Woodward's T.V. Store in the suburban area was increased 110% (Plate 187) while Gotch's T.V. Store in the business district was increased 120% (Plate 591).

A little store selling Pizza in the sububan area was increased 110% (Plate 187) while a similar store in the City of Streator was inreased 120% (Plates 1015, 1016) Northtown Furniture Store in the suburban area was inreased 110% (Plate 187-1). Fredman's Furniture Store in the City of Streator was increased 120% (Plate 1026). Drysdale's Root Beer Stand in the suburban area was increased 110% (Plate 191) while Whalen's Root Beer Stand in the city

limits was increased 120% (Plates 401, 402, 406). The Dari-Queen, a drive-in ice cream stand in the suburban area, was increased 110% (Plate 195) while the Kreem-Kurl, a drive-in ice cream stand in the city limits, was increased 120% (Plate 3078). A trailer sales and 2 trailer parks in the suburban area were each increased 110% (Plates 199, 201). A trailer park in the city limits was increased 120% (Plates 4016, 4017, 4027, 4028). A gas station in the suburban area was increased 110% (Plate 202) while the gas station within the city limits were increased 120% (Plate 1085). The House of Magic, a bowling alley and restaurant in the suburban area, was increased 110% (Plate 203) while Cantello's Bowling Alley in the City of Streator (Plate 564) was increased 120%. Pictures in evidence show that these 2 establishments are almost identical (Photo Objector's Exhibits 3 and 4; Rec. 43, 44). The S & S grocery store in the suburban area was increased 110% (Plate 204). The Highland Market, a grocery store located about 5 or 6 blocks south of the S & S on the same street, but inside the city limits of the City of Streator, was increased 120% (Plate 3545). Pictures of these 2 establishments are in evidence showing that they are practically identical pieces of property (Photos Objector's Exhibits 5 and 6; Rec. 66, 67). The Internationl Sales Store and Repair Shop located in the suburban area was increased 110% (Plate 209). All automobile garages in the City of Streator were increased 120% (Plate 419). The Streator Roller Rink in the suburban area was increased 110% (Plate 212A). All amusement buildings in the City of Streator were increased 120%. The Kayser & Schwind Greenhouse in the suburban area was increased 110% (Plate 217B). All business establishments in the city were increased 120%.

There are a total of 41 commercial properties in the suburban area which were increased only 110%. These

properties have an assessed value of $369,296.00. This is the valuation of the Assessor as changed by the Supervisor of Assessments before the increase by the Board of Review. It is approximately 1.1% of the total value of all real estate in Bruce Township, residence, commercial and industrial.

We come now to the manner in which the Board of Review increased the assessments of industrial property in Bruce Township. Faber & Co. Rendering Works, located outside the City of Streator, was increased 110% (Plate 91). Thatcher Glass & Mfg. Co., a large manufacturer of glass bottles, having a valuation of $1,055,990.00 before the increase made by the Board of Review was increased 110% (Plates 228, 234, 235, 238-242, 246A, 246B). Anthony Co. with a valuation of $350,000.00 was increased 110% (Plate 233). Knoedler's Mfg. Co. (Plate 1694, 1695) and the Meat Packing Factory (Plate 2281), located in the city limits of the City of Streator, are all manufacturing plants, increased 120%. Streator Canning Company is a factory located inside the city limits of the City of Streator, Illinois, with an assessed value of $47,110.00 placed thereon by the Assessor with no change by the Supervisor of Assessments (Plates 283, 284). Although this factory is located within the city limits it was increased only 110%. The Hydraulic Press Brick Company and the Streator Drain Tile Company are each large factories having very similar buildings and operations. One manufactures brick from clay products and one manufactures tile from clay products. They are located just across the street from each other (Rec. 41). The factories of both are inside the city limits of the City of Streator. The drain tile factory was increased 110% (Plate 273) while the brick company was increased 120% (Plate 6069). An aerial photograph of these 2 factories is in evidence showing that they are almost identical properties (Objector's Exhibit 9; Rec. 70).

The Owens Illinois Glass Co. factory is the largest factory in the City of Streator. It makes glass bottles and employs over 2,000 people. Its factory is located in the city limits of the City of Streator. It has a total assessed value as fixed by the Assessor and changed by the Supervisor of Assessments of $3,058,940.00. The South half of this factory was increased 120% (Plate 247). Pictures of this manufacturing plant are in evidence showing the portion South of Bronson Street which was increased 120% and the portion North of Bronson Street which was increased 110% (Photos Exhibits 10 and 11; Rec. 71, 72. See also Rec. 42, 43). Then, after the Board of Review went out of session it issued a Certificate of Error, stating that it made a clerical error in making any increase in the assessment of Owens Illinois Glass Company plant and that it did not actually intend to make any increase at all in this assessment (Rec. 75-77).

The total valuation of industrial property in the Township that was increased 10% or none at all was $4,077,906.80. This includes 7 large industrial properties. A similar number of other industrial properties in the Township were increased 120%.

The total value of all property in the Township increased by a multiplier of 110% or less, is just a little over $5,000,000.00. This is about 17% of all of the real estate in the Township.

No notice was given to any individual in Bruce Township, excepting the Notice quoted above which was published in the Times Press, and no hearing was given to any property owner in Bruce Township by the Board of Review before it made the increases summarized herein, other than the hearing held with reference to the horizontal raise (Rec. 9).

REASONS FOR GRANTING THE WRIT.

I.

Once an Assessment of Property for Taxation has been made, then due process of law requires notice and an opportunity to be heard before the Assessment can be increased.

In Illinois the method of fixing the value of property for taxation in counties under 150,000 population is that the elected Township Assessor views the various properties in his township, fixes the value of each tract, and records the valuation in the Assessor's Book (Ill. Rev. Stat. 1957, Chap. 120, par. 524). After completing his assessments he returns the Assessor's Book to the Office of the County Clerk. The County Treasurer, who is *ex officio* Supervisor of Assessments, then reviews the assessments made by the various assessors throughout the county, and he has the same authority as the Township Assessor to assess and to make changes or alterations in the assessment of property. Any changes made by him in the assessments returned by the Township Assessor, are noted by him, in a column provided in the Assessment Book for that purpose. No change is made in the original figures of the assessor. (Ill. Rev. Stat. 1957, Chap. 120, par. 483).

After the revision, as made by the Supervisor of Assessments, the assessment list showing the valuation based on each piece of property is required to be published in a newspaper (Ill. Rev. Stat. 1957, Chap. 120, par. 584). This published notice notifies the taxpayer that if he is not satisfied with his assessment he may appear before the Board of Review and be heard as to the propriety of the

valuation placed upon his property. The Board of Review has authority to review the assessment and correct the same as shall appear to be just. The Board of Review has authority to increase, reduce or otherwise adjust the assessment of any individual or corporation and may do anything in regard thereto that it may deem necessary to make a just assessment. However, it may not make any increase in any assessment until the person or corporation to be affected shall have been notified and given an opportunity to be heard (Ill. Rev. Stat. 1957, Chap. 120, par. 589(4)).

This is the last opportunity that the taxpayer has in Illinois to a hearing as to the valuation of his property for taxation. He may appear before the County Court in the suit to collect unpaid taxes and raise the question that the tax assessed against him is illegal or void or that the assessment was fraudulently made. However, at that time he may not complain that the valuation is too high.

In addition to its authority to increase or adjust individual assessments, the Board of Review is also given certain authority to act as an equalizing agency. It may increase or reduce the entire assessment of either real estate or personal property, or both, or any class included therein if in its opinion the assessment has not been made on the proper basis, or it may equalize the assessment of real or personal property by increasing or reducing the amount thereof in any township, or part thereof, or any portion of the county as may in its opinion be just. Before taking any such action commonly referred to as a horizontal rise of assessments, the Board of Review must publish a Notice in a newspaper of general circulation published in the county of such proposed increase, and must give the owners of the property affected, or anyone representing them an opportunity to be heard within 20 days after the date of such publication (Ill. Rev. Stat. 1957, Chap. 120, par. 589 (5)).

Once an assessment of property has been made, due process of law requires that the assessment shall not be increased without notice to the taxpayer and an opportunity to be heard. In 12 Am. Jur. "Constitutional Law", Sec. 642, the rule is set forth as follows:

> "It is a general rule that 'due process' requires that after an assessment has been made by an assessor, it cannot be increased by a reviewing board without notice to the taxpayer or opportunity to be heard. Hence, a statute giving a reviewing board power to increase individual assessments without notice to the taxpayer or provision for review is unconstitutional as denying due process. The law authorizing such proceeding must require notice or it will be unconstitutional. It is not enough that a person may by chance have notice or that he may as a matter of favor or courtesy have a hearing. A statute giving to a tax commission power to increase individual assessments, without providing for notice to the taxpayer other than is given by the fact that the time of the meeting of the commission is fixed by law, does not afford the notice necessary to due process; though the rule may be otherwise in the case of a horizontal increase of all property, or of all property of a certain class, in the taxing district."

In 24 A.L.R. 331 "Annotation", at p. 339 and 340, the rule is stated as follows:

> "It is somewhat difficult to separate the cases which hold merely that, where the statute requires notice to the property owner affected before an increase in his assessment by a board of equalization, such notice must be given (see III. b, infr), from those cases which hold, apparently independently of express statute, that notice is required, because frequently the court, in holding that notice was essential, may have in mind some controlling statutory provision, without referring to the same. But, while an absolutely accurate list of cases may be impossible, because of this

failure to refer to or set out statutory provisions, yet there is authority clearly to the effect that, independently of express requirement of statute, some form of notice is required by the fundamental law before the assessment of a taxpayer can be legally raised by a board of equalization, if its order is final."

In a supplemental Annotation in 84 A.L.R. 197, at p. 202 it is stated:

"In addition to the cases cited in the earlier annotation in 24 A.L.R. on p. 340, to the effect that, apparently apart from express requirement of statute, some form of notice is required by the fundamental law before the assessment of a taxpayer can be legally raised by a board of equalization, if its order is final, the rule is supported by several more recent decisions. (See in this connection *Draffen* v. *Paducah* (1926) 215 Ky. 139, 284 S.W. 1027, subd. II. *supra.*)

Due process requires that, after an assessment has been made by an assessor, it cannot be increased by a reviewing board without notice to the taxpayer or opportunity to be heard. *Beveridge* v. *Baer* (reported herewith) *ante*, 189. To a similar effect are *Markham* v. *Carver* (1924), 199 N.C. 615, 125 S.E. 409; and *Hart* v. *Burke County* (1926), 192 N.C. 161, 134 S.E. 403.

The great weight of authority, it was said in *Northwestern Bell Teleph. Co.* v. *State Bd. of Equalization & Assessment* (1929), 119 Nev. 138, 227 N.W. 452, clearly holds to the proposition that an assessed valuation of property cannot be increased without due notice to the owner of the property, and this to the end that he may first be heard."

In the case of *Central of Georgia Railway Co.* v. *Wright*, 207 U.S. 127, 52 L. ed. 134, certain property was not listed by the taxpayer for taxation. Under the law of Georgia this property was then listed by the proper state official and the valuation thereof fixed by him without any notice

or opportunity to the taxpayer to be heard. This was held to violate due process of law. The court states:

> "It would be impossible to reconcile the different holdings in the state courts upon this subject. One class holds that upon the assessment of omitted property the taxpayer has no right to be heard, having by his failure to return submitted himself to 'the doom of the assessor.' Another class holds that in such cases there must be an opportunity to be heard before the taxpayer can be thus assessed, and that to deny him such right as a penalty for failure to return is a denial of due process of law secured to the taxpayer by many state Constitutions as well as the 14th Amendment of the Constitution of the United States.
>
> Of course, this court, as the ultimate arbiter of rights secured by the Federal Constitution, is charged with the duty of determining this question for itself.
>
> Former adjudications in this court have settled the law to be that the assessment of a tax is action judicial in its nature, requiring for the legal exertion of the power such opportunity to appear and be heard as the circumstances of the case require. *Davidson* v. *New Orleans*, 96 U.S. 97, 24 L. ed. 616; *Weyerhaueser* v. *Minnesota*, 176 U.S. 550, 44 L. ed. 583, 20 Sup. Ct. Rep. 485; *Hagar* v. *Reclamation Dist. No.* 108, 111 U.S. 701, 28 L. ed. 569, 4 Sup. Ct. Rep. 663.
>
> In the late case of *Security & S. T. Co.* v. *Lexington*, 203 U.S. 323, 51 L. ed. 204, 27 Sup. Ct. Rep. 87, decided at the last term of this court, the subject underwent consideration, and it was there held that, before an assessment of taxes could be made upon omitted property, notice to the taxpayer, with an opportunity to be heard, was essential, and that somewhere during the process of the assessment the taxpayer must have an opportunity to be heard, and that this notice must be provided as an essential part of the statutory provision, and not awarded as a mere matter of favor or grace. In that case it was further held that where the procedure in the state court gave the taxpayer an opportunity to be heard upon the

value of his property and extent of the tax in a proceeding to enjoin its collection the requirement of due process of law was satisfied.

• • •

As we have seen, the system provided in Georgia by the statutes of the state as construed by its highest court requires of the taxpayer that he return all his property, whether its liability is fairly contestable, or not, upon pain of an *ex parte* valuation, against which there is no relief in the tax proceedings or in the courts, except in those cases where fraud or corruption can be shown in the action of the assessing officer.

Reluctant as we are to interfere with the enforcement of the tax laws of a state, we are constrained to the conclusion that this system does not afford that due process of law which adjudges upon notice and opportunity to be heard, which it was the intention of the 14th Amendment to protect against impairment by state action."

See also *Jessup* v. *Chicago & C. R. Co.*, Fed. cas. 7300; *Railroad Tax Cases*, (1882) 8 Fawy. 238, 13 Fed. 722, Writ of Error dismissed in 116 U.S. 138, 29 L. ed. 589, 6 Sup. Ct. Rep. 317.

This fundamental rule has been recognized by the Supreme Court of Illinois. In the case of *Dietman* v. *Hunter*, 5 Ill. 2d 486, 126 N.E. 228, the court states at p. 489:

> "Due process requires that the property owner be given notice and an opportunity to be heard upon the valuation of his property at some point in the taxing process before his liability to pay the tax becomes conclusively established. A failure in this regard renders the tax void and uncollectible. (*Central of Georgia Railway Co.* v. *Wright*, 207 U.S. 127.)"

This rule on the increase of an individual assessment is distinguished from the case of a horizontal rise or an increase of all assessments in a taxing district by the same

percentage. In this latter case the valuations of all properties are increased alike. Here, although the assessment is increased, the liability of each piece of property for taxes in relation to the other properties in the taxing district remain the same. Furthermore, it would be impossible to give everyone in the taxing district an individual notice. The taxing district might be statewide. This would require a notice to everyone in the state. Therefore, to satisfy the requirements of due process of law, in the case of a horizontal rise of assessments, only such notice as is required by the state law must be given. See 24 A.L.R. Ann. 332, at p. 333, 84 A.L.R. Ann. 197, at p. 198. *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U.S. 441, 36 Sup. Ct. Rep. 141, 60 L. ed 372.

This is not the type of raise made by the Board of Review in our case. The action taken by the Board of Review in raising certain properties in the township by 110%, and other similar properties in the same class in the township by 120% really constitutes individual raises of the assessments. This was all done after the assessment figures were published in the newspaper and after the taxpayers had an opportunity to appear before the Board of Review. No notice of any kind was given to the taxpayers, and no opportunity was given to them to appear or protest this increase in the valuations of their properties for taxation.

An attempt is made to justify the increase in assessments as a horizontal rise by attempting to classify the property in Bruce Township into those properties listed in the "lands" section of the assessor's book, and those properties listed in the "lots" section of the assessor's book. It is urged that this is a proper classification of property for making a horizontal rise in assessments and that it was

proper to increase the valuations of all properties in all the "lands" section of the book by 110% while all properties in the "lots" section of the book were increased by 120%. There are two answers to this contention. First, this was not the increase made by the Board of Review in the Order entered by it and incorporated into its records, after the public hearing. That order specifically increased "farm lands" 110% and "lots" 120%. Secondly, many of the residence, commercial and industrial properties in the "lands" section of the book are exactly the same as similar properties in the "lots" section of the book. The evidence is voluminous of similar factories in the two sections increased by different percentages. The same is true with reference to residence property and commercial property. Since many of the actual properties in the two sections of the Assessor's Book are the same, it would be a completely arbitrary and unreasonable classification to make one rise of properties in the "lands" section and another rise in the properties in the "lots" section.

The contention is further made in an attempt to justify the rise in assessments that the local assessor made his assessment for the previous quadrennial period commencing in 1954 which was increased in 1957 by the Department of Revenue by 10%. It is argued that in the year 1958, the local assessor made his assessment of substantially all of the properties in the "lands" section in the book at the same figure at which he assessed these properties for the previous quadrennial which was approximately 10% below the previous assessed value after it was raised by the Department of Revenue. It is contended further that the local assessor reduced the assessment of substantially all of the properties in the "lots" section of the book to a figure 10% below his assessed value for the

previous quadrennial which was approximately 20% below the previous assessed value after it was increased by the Department of Revenue. This, it is contended, is the basis for a classification between the "lands" section and the "lots" section of the Assessor's Book in making this horizontal increase.

This contention is not borne out by the record or by the facts in this case. There are approximately 406 items of property in the "lands" section of the Assessor's Book. These are numbered 1 to 287 inclusive with several sub-numbers such as 187a, 187b and etc. (People's Exhibit 1, Rec. 79). The witness, Frank Neumann, described in detail the various pieces of property included in the "lands" section of the assessor's book which were not "farm lands" (Rec. 12-44). A tabulation as to the plate numbers and properties testified to by this witness was made by the County Treasurer's Office and introduced in evidence as People's Exhibit 12 (R. 87). Out of the 406 items of property in the "lands" section of the Assessor's Book, witness Frank Neumann described 182 of these items as residential, commercial and industrial properties. This would leave 224 items of property as farm land. Of these 224 items of farm land, in the "lands" section of the Assessor's Book, the assessment of all but 16 items was made by the Assessor at exactly the same figure as his assessment for the previous quadrennial, which was 10% below the assessment for the year 1957 as raised by the Department of Revenue. The 16 items of farm lands which were changed by the Assessor are set forth and itemized on page 81 of the record. An examination of these 16 items shows that they are obviously corrections of some inequity that existed, or are an adjustment for improvements that had been placed on the properties. Many of the changes are increased, other are decreased. There is no uniform pat-

tern. At any rate, 204 of the farm properties in the "lands" section of the book were decreased 10% by the Assessor from the assessment of the previous year as adjusted by the Department of Revenue.

When we look at the commercial, residential and industrial properties in the "lands" section of the Assessor's Book, the situation is entirely different. There are 182 such properties in the "lands" section of the Assessor's Book. Of the 182 non-farm properties in the "lands" section of the Assessor's Book, 121 assessments were changed by the Assessor from his assessment for the previous quadrennial. These items changed are set forth and listed at pages 82, 83, 84 and 85 of the Abstract. They constitute 67% of all of the non-farm properties in the "lands" section of the book. 93 of these items that were changed were reduced by 10% or more. This is exactly the same as the reduction made by the Assessor of the properties in the "lots" section of the Assessor's books.

The action of the Board of Review materially and adversely affects the tax levied on petitioner's property.

It is true that petitioner's property was increased by 120% and that this is the amount provided in the order. However, the validity of a horizontal rise in taxes must depend on all taxes on properties in the same class being raised by the same percentage. Even though petitioner is not raised above the amount proposed for her property, still if large numbers of other properties in the same class are raised less than this amount, the tax to be levied and assessed against petitioner's property will be materially increased.

The validity of a horizontal rise in the taxes must stand or fall as a unit. It is not possible for it to be half good and half bad. If any substantial portion of it is void, then

the entire rise is void. This is necessarily true because of the very nature of a horizontal rise. Such a rise is justified by the fact that all property in that particular class is raised by the same percentage. If petitioner's property is raised by 120% and substantial numbers of other properties in the same class are raised by only 110%, then obviously petitioner's tax will be very materially increased. This is all done without notice and without an opportunity to be heard. It violates the fundamental rights of petitioner and deprives her of her property without due process of law.

II.

The Board of Review of LaSalle County, Illinois is a statutory board and has only such authority as is expressly granted to it by the statute. Any actions beyond the scope of its authority are void and deprive the taxpayers of their property without due process of law.

The law is well settled that the Board of Review in Illinois is a statutory board. It has no common law powers or rights and can act only in conformity with the powers granted to it by the statute. See *People* v. *Keogh*, 306 Ill. 323, 137 N.E. 816. *People ex rel Ferguson* v. *Schlitz Transfer Co.*, 333 Ill. 333, 164 N.E. 702. *People ex rel Shirk* v. *Glass*, 9 Ill. 2d 302, 137 N.E. 2d 265. The Board of Review must make a record of its actions. It cannot revise assessments orally. It can act only by making a written record of its actions and its actions can be shown only by the record it makes. Parol levy of taxes is not legally possible. *People ex rel Shirk* v. *Glass*, 9 Ill. 2d 302, 137 N.E. 2d 265, *People* v. *Abraham*, 295 Ill. 582, 129 N.E. 511. *People* v. *Vail*, 296 Ill. 61, 129 N.E. 494. *People* v. *Chicago Lake Shore & Eastern Railway Co.*, 270 Ill. 477, 110 N.E. 720. *Weber* v. *Baird*, 208 Ill. 209, 70 N.E. 231.

The Illinois statute in question authorizing the Board of Review to make a horizontal rise of taxes requires the Board first to publish a notice in a newspaper of the proposed increase and the time and place when the Board of Review will hold a hearing concerning the proposed increase. The Board has no authority to make an increase without giving this notice and holding a Hearing. See Ill. Rev. Stat. 1957, Chap. 120, par. 589 (5). *People* v. *Schlitz Transfer Co.*, 333 Ill. 333, 164 N.E. 702.

Once the Board of Review entered on its records its order of April 13th, 1959, it lost jurisdiction to do anything other than contained in the order without starting over and giving a new notice and holding a new hearing. The later action taken by the Board was entirely different than that specified in its order. It amounted to a completely new action and was done in a manner only beyond the scope of authority given to the Board of Review by the statutes of the State of Illinois. Consequently the action was void, and the tax levied against petitioner's property based on the Board action was also void. To enforce this tax would deprive petitioner of her property without due process of law.

CONCLUSION.

This case is of vital importance to the citizens throughout the United States. State taxes have been increasing for a period of several years and the prospect is that this trend will continue. Pressure is being brought everywhere to attempt to increase property assessments for taxation. It is essential that any such increases be made in such a way as to protect the fundamental rights of United States Citizens throughout the country. The principles have long been established that an increase in an individual assessment without notice or hearing deprives the taxpayer of due process of law, but that a horizontal

rise of the assessments of all properties in a particular taxing district may be made without notice and hearing. This court, however, has not previously had the opportunity to define and to protect the rights of those citizens, where individual increases in assessments are made without notice and hearing under the guise or excuse that they constitute a horizontal rise. To permit such an increase to be made is to give only lip service to the fundamental rights guaranteed by the 14th Amendment to the United States Constitution.

This case is likewise important to the citizens of Bruce Township, LaSalle County, Illinois. This particular case involves only the tax of petitioner in the amount of $147.86. However, the owners of approximately 1650 tracts of real estate in Bruce Township have paid their taxes under protest. This involves approximately $475,000.00 in taxes and about $80,000.00 of this amount is paid under protest. It has been stipulated that the outcome of this case will govern all of these objections.

Therefore, this case involves a substantial amount of money. It involves the fundamental rights of these taxpayers and of other citizens of the United States on an important question of due process of law. It involves questions the precise nature of which this court has not previously had the opportunity to consider. We submit that the points at issue deserve the attention of this court to do away with confusion and injustice in the application of the fundamental rights of due process of law as they apply to the assessments of property for the levy of state taxes.

Respectfully submitted,

ANDREW J. O'CONOR
Attorney for Petitioner

APPENDIX A.

OPINION OF THE SUPREME COURT OF ILLINOIS

Docket No. 36184—Agenda 22—March, 1961.

The People *ex rel.* Harlow Miller, County Collector Appellee, v. John Doe *et al.*—(Iva Lux, Appellant.)

Mr. JUSTICE BRISTOW delivered the opinion of the court:

The defendant Iva Lux appeals directly to this court from a judgment of the county court of La Salle County overruling her objections to the county treasurer's application for judgment for 1958 taxes, which the objector had paid under protest. Her objection challenges the validity of township multipliers applied by the board of review of La Salle County to assessed values of property in Bruce Township of said county for 1958, pursuant to provisions of the Revenue Act. Ill. Rev. Stat. 1957, chap. 120, par. 589(5).

Inasmuch as this suit involves the revenue directly, the appeal properly comes to this court direct from the county court.

The assessor's books for Bruce Township real estate, for both the 1954 and 1958 quadrennial assessments, used two basic classifications of "Lands" and "Lots." The "Lands" assessment book includes all real estate in the township which is not platted into lots both inside and outside of the city of Streator. Lands included in such classifications are variously used for farm, residential, business and industrial purposes. The "Lots" assessment books include all real estate in the township which is platted into lots, both inside and outside the city of Streator.

In 1957, the Illinois Department of Revenue certified a multiplier of 1.0989 to be applied to the assessed value of all property in La Salle County under its general powers of equalization, such multiplier in effect giving approximately a 10% "across the board" increase in assessed values.

In the 1958 quadrennial assessment, the Bruce Township assessor reduced the final equalized assessment figures of 1957, which had been obtained by application of the State multiplier, by approximately 20% on 4690 "lots," the remaining "lots" which were not so reduced being largely vacant "lots" of small valuation. As to "lands" the assessor reduced the final equalized assessment figures by approximately 10%. The total equalized assessed value after application of the State multiplier in 1957 was $4,944,850 for "lands" and $34,777,700 for "lots." The assessor's valuations for 1958 of the same "lands" was $4,518,570 and the same "lots" was $28,770,390. After giving effect to improvements on existing structures, new construction, and losses in value by fire or demolition, a reductio.. in equalization value of approximately 10% for "lands" and 20% for "lots" is apparent in the easements.

The assessments as made by the assessor for the 1958 quadrennial, as modified by the supervisor of assessments, was duly published in the Streator Daily Times Press. Thereafter individual complaints were filed with and heard by the board of review and resulting adjustments in individual assessments made.

The board of review then proceeded to publish a notice on March 25, April 1, and April 8, 1959, that it proposed to increase the 1958 quadrennial assessment of all real estate, including improvements, in Bruce Township, and the 1958 assessment of all personal property other than pas-

senger automobiles, trucks, busses, trailers and capital stock by 20% and that a public hearing would be held by the board on April 13, 1959, at the Ottawa court house concerning said proposal.

A hearing was held on such date at which approximately 50 people were present with legal counsel. After the hearing, a written order was signed by the board of review members and incorporated in its records that the assessment for Bruce Township for the 1958 quadrennial " • • • shall be increased by 20% on all lots, including improvements and shall be increased by 10% on all *farm* lands including improvements; and the present assessment • • • shall be increased 20% on all personal property provided such increase shall not apply to the present assessment • • • on all passenger automobiles, trucks, busses, trailers, capital stock, grain, hay and livestock." (Italics supplied.)

The board of review thereupon caused every tract of property in the "lands" book to be increased by 10% regardless of the use of such land for residential, commercial, industrial or farm purposes, and every tract in the "lots" books to be increased by 20%. In the "lands" book there were a total of 406 tracts, of which 182 were used for residential, business or industrial purposes, and the remaining 224 tracts were used for farm purposes. On May 12, 1959, the board of review reported to the Illinois Department of Revenue that the assessed value of "lands" in Bruce Township had been increased 10% and that the assessed value of "lots" in Bruce Township had been increased 20%.

The property of objector appellant consists of an improved residence lot in the city of Streator assessed at $3,420 which was increased by application of the disputed multiplier 20% to $4,100. There were 153 properties used

for residence purposes in Bruce Township similar to the objector's which were increased only 10% by application of the multiplier. There were instances where one property used for residence purposes was increased 10% and other properties of similar use located either adjacent thereto or across the road or in the same area were increased 20%. Numerous comparable situations exist between the assessment of various properties used for similar commercial and industrial purposes, since some of each were located on property listed in the "lands" and some in the "lots" books.

The authority of the board of review to establish and apply "township multipliers" is derived from the Revenue Act (Ill. Rev. Stat. 1957, chap. 120, par. 589) which, so far as pertinent, provides as follows:

"In counties containing less than 500,000 inhabitants, the board of review shall, in any year, whether the year of the quadrennial assessment or not:

* * *

"(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have published a notice in a newspaper of general circulation published in the county, of such proposed increase and shall have given the owners of the property affected, or any one representing them, or other citizens of said territory, an opportunity to be heard within 20 days after the date of such publication."

It is urged by appellant that the attempted horizontal rise of the Bruce Township assessments by application of the "township multiplier" is void for four reasons: first, that both the order and increase by the board are void for failure to conform to the published notice; second, that the increase exceeds the authority of the board in that there is no reasonable basis for the purported classification, and actually increases property in the same classification by different percentages, thereby violating the United States and Illinois constitutions; third, that the board cannot order increases in certain classes of property and then actually make increases in different classes of property in different amounts; and fourth, that the board action amounts to the increase of individual assessments without notice in violation of the due-process clauses of the Federal and State constitutions.

The appellee contends that the application of the "township multipliers" was valid because, first, the board proceeded according to the statutory authority; second, the board, after hearing had, can set up smaller percentages of increase than those proposed in the notice; and third, the burden of proof required of the tax objector was lacking.

The statutory authority for the board action above set forth provides for the giving of notice and the manner of giving it. The notice given in this case was that the board proposed to increase the assessed value of all real estate 20%. Appellant urges that the board classified property entirely differently and at different rates in its action than in the notice it gave by publication, thereby exceeding its jurisdiction, and that the order and increases made pursuant to it are thereby void.

There can be no question but that the notice and hearing required by the statute are jurisdictional and a prerequisite to board action in establishing a "township multiplier."

(*People ex rel. Bracher* v. *Abraham*, 295 Ill. 582; *People ex rel. Rea* v. *Nokomis Coal Co.*, 308 Ill. 45; *People ex rel. Hicks* v. *Lycan*, 314 Ill. 590.) Here notice was given but the action taken was not in exact conformity with the notice. This precise question as to the validity of variation as here made from the action proposed in the notice seems to be of first impression in this court. In the cases of *People ex rel. Bracher* v. *Orvis*, 301 Ill. 350; *People ex rel. Ferguson* v. *Schlitz Transfer Co.*, 333 Ill. 333; and *People ex rel. Lunn* v. *Chicago Title and Trust Co.*, 409 Ill. 505, the notices involved were all in broad terms and were not limited to any specific proposed percentage of increase. In *People ex rel. Murray* v. *City of St. Louis*, 291 Ill. 600, notice was given of a hearing on a proposal to assess the approaches to a bridge, and based on such notice the entire bridge was assessed. The notice was held sufficient in view of the fact that the same persons owned the bridge who owned the approaches thereto, and that they appeared at the hearing.

In *People ex rel. Bracher* v. *Vail*, 296 Ill. 61, a board of review adopted a resolution raising the valuation of real estate throughout the county, gave statutory notice of hearings as to why the assessment should not be increased, and after several hearings the books were signed and the board adjourned, the original resolution remaining unchanged. In holding such board action improper, the court said: "* * * the board evidently regarded its resolution as the final decision of its determination to increase the assessment and made no other order or record of its decision, but the increase remained as fixed by the resolution. * * * It was equivalent to a final determination of the question in advance of hearing, and unless the board could be convinced the decision was wrong it should stand. That was not a compliance with the purpose and spirit of the statute

requiring notice and an opportunity to the property owners to be heard. They were entitled to a hearing before the question was decided, but they were not given that privilege."

The *Vail* case and other cited cases clearly indicate that the purpose and spirit of the statute requiring notice is to afford a hearing to property owners before the question of the amount of increase, if any, is finally decided. The statute here in question directs publication of notice of the *proposed* increase, not the final increase. The *Vail* case prohibits the board of review from determining in advance exactly what increase of rates it will make and in which classes. The argument of the objectiors would require the board of necessity to decide the matter in advance, because according to their argument if an order is entered different in any respect from the proposed increase published in the notice it would be invalid. If such were the cases there would be no purpose in any property owners appearing at the hearing because they would know in advance that the board was limited by the terms of its published notice and could not depart therefrom. Such argument, if valid, would destroy the very purpose of the notice and opportunity to be heard. In the instant case notice of the proposed increase was directed to all property owners in Bruce Township and thereby they were put on notice than any and all of them could appear and object and possibly influence the board to change its opinion as to imposing the proposed rate of increase and possibly no increase at all. The legislative wisdom in providing for such notice was demonstrated by the fact that the property owners at such hearing did prevail upon the board to change its decision. To say that the board of review is limited in its action to the proposed increase stated in its notice, and cannot reasonably modify, reduce or limit the rate of increase, either in whole or as to

different classifications of property, as a result of such hearing, would result in a destruction of the spirit, purpose and intention of the notice required by the statute. The board gave notice of hearing on a proposed increase of assessed values as required by the statute, and thereby had jurisdiction to enter an order within the limits of such proposed increase deemed appropriate and reasonable as a result of such hearing, without being strictly limited to adopting or not adopting the increase proposed.

The objector also argues that the equality and uniformity of taxation requirements of both the Illinois and Federal constitutions are violated because there is no reasonable basis for the classifications used and because properties actually in the same classifications were increased in assessed values by different percentages. There is no argument over the fundamental principle that taxes must be equal and uniform among members of the same class. (Ill. const. of 1870, art. IX, sec. 1; U.S. const., amendment XIV, sec. 1; *People ex rel. Wangelin* v. *Gillespie,* 358 Ill. 40; *First National Bank of Urbana* v. *Holmes,* 246 Ill. 362.) Likewise, there is no argument over the principle that a classification of persons may not be arbitrary or capricious, and the uniformity requirements may be violated by including in a class of property that which in fact is not within the class or by excluding property which is properly within it. *Ohio Oil Co.* v. *Wright,* 386 Ill. 206; *City of Chicago* v. *Ames,* 365 Ill. 529; *People ex rel. Toman* v. *Olympia Fields Country Club,* 374 Ill. 161.

The board of review action in question consisted of applying a certain percentage of increase to all "lots," whether improved or unimproved (referring to all lots listed in the "lots" books of the assessor), and a different percentage of increase to "lands" (referring to all lands

listed in the "land" books of the assessor). Objector's contention is that all properties used for residential purposes should be in the same class, all used for grocery store purposes in the same class, all used for bowling alley purposes in the same class, all used for industrial purposes in the same class, etc., regardless of whether such properties were in the suburban area or in the city, and regardless of whether the properties were platted or unplatted. It is argued that the classification of property must be determined from the uses to which it is put and that all property of like use and character must be treated the same.

The case cited by objector most nearly persuasive of this contention is *People ex rel. Lindsay* v. *Palmer*, 113 Ill. 346, in which it was held that the mere fact that certain residential property situated within the city of Danville was unplatted into lots did not justify treating it within the classification of "lands" rather than "lots." In that case the State Board of Equalization deducted 3% from the equalized valuation of "lots" and added 5% to that of "lands" in Vermilion County, after the county board had added 7% to "lands" in Danville township but had left the assessment of "lots" in Danville unchanged. Because the objector's land was unplatted, the board of review considered it as "lands" in applying such multipliers. The court did say in its opinion that it regarded as too strict a construction the argument that property could not be classified under "lots" if it had never been platted and laid out into town lots by the owner according to the pertinent statute covering the same. It was observed in such connection that it is the situation of the property and the uses to which it is put which should determine its character under this classification. The court then proceeded to state that the property in question was surrounded on all sides by streets of the city, consisted of 4.88 acres, was used as a residence by the

owner, and was larger than ordinary city lots but not larger than a block or out-lot might be. The court thereby reached its conclusion that the property was a city lot in fact, though not laid out and platted as such, and fell in the class of city lots within the design and intention of the statutory classification. Such case is no authority for the proposition that classification of real estate for taxation as "lands" or "lots" is an improper basis of classification.

A case very analogous to the instant case is *People ex rel. Lunn* v. *Chicago Title and Trust Co.*, 409 Ill. 505. There a board of review made a horizontal increase of lands in the amount of 25%, of lots in the amount of 100%, and improvements in the amount of 50%. The objectors contended that the increases were arbitrary and unreasonable. In affirming the increases and the classifications there involved, this court said: "The short answer to this is that it was necessary to increase the values of tracts and lots by different percentages in order to make their assessed valuations uniform. Furthermore, section 20 of the Revenue Act, (Ill. Rev. Stat. 1947, chap. 120, par. 501,) providing for the valuation of real property, refers to tracts and lots, and subparagraph 5 of section 108 (Ill. Rev. Stat. 1947, chap. 120, par. 589,) in authorizing boards of review to increase an entire assessment of real property or an included class, does not impose any limitation upon the classification of real property. The classification of real estate into lands and lots being impliedly authorized by section 20 and not prohibited by section 108, and being reasonably necessary to equalize the assessment in Warren township, it cannot be said that the action of the county board in so classifying real estate was arbitrary or capricious."

The above quotation applies with particular force to the instant case. It, with the decisions in *People ex rel. Toman* v. *Olympia Field Country Club*, 374 Ill. 101; *People ex rel.*

Toman v. *Pickard*, 377 Ill. 610; *People* v. *Southwestern Bell Telephone Co.*, 377 Ill. 303; *State* v. *Local Board of Review*, 225 Ia. 855, 283 N.W. 87; and *Fromkin* v. *State*, 158 (Neb. 377,) 63 N.W. 2d 332, indicate that a classification of real estate into lands and lots, for the purpose of applying a different per cent of increase to each classification, is not arbitrary nor capricious, nor does it violate the constitution nor destroy the constitutional requirement for uniformity of taxation.

It is further argued that the entire horizontal increase in assessed values is void because the board of review actually made increases in different classifications and in different amounts than that determined in the board's order made pursuant to the hearing. The notice was of a proposed increase of 20% on all real estate. After the hearing the board entered an order providing for the assessment on all "lots" to be increased 20% and for the assessment on all "farm lands" to be increased by 10%. Thereafter the board actually increased the assessed value of all "lots" by 20% and increased the assessed value of all properties included in the assessor's books under the heading "lands" by 10%, including therein not only properties used for farm purposes but also certain properties used for residential, commercial and industrial purposes. Appellant argues that the published notice classified all real estate in Bruce Township into one class, that after the hearing pursuant to such notice the board entered an order reclassifying the real estate into two classes, "lots" and "farm lands," that thereafter the board had no authority to make a different horizontal increase without holding another hearing, and that the action finally taken was beyond the scope of the board's authority.

It is admitted that the board of review is a creature of statute, that it has only such powers as are expressly given it by the legislature, and that it will not be presumed that the board has any powers other than those delegated to it by plain and specific language. (*People ex rel. Carr* v. *Keogh*, 306 Ill. 323; *People ex rel. Shirk* v. *Glass*, 9 Ill. 2d 302; *People ex rel. Ferguson* v. *Schlitz Transfer Co.*, 333 Ill. 333.) Under the statute in question the board has been expressly given power to increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein, or equalize the assessment thereof, provided no increase of assessment shall be made until a notice of the proposed increase is published and a public hearing had. From what has heretofore been said, the board in this case held a lawful hearing and had jurisdiction to take the action it did. What was the nature and effect of such action?

It is well settled that the board's action must be determined from the record it makes, that it can act only by making a written record of its action, and its actions can be shown only by the record it makes. (*People ex rel. Shirk* v. *Glass*, 9 Ill. 2d 302; *People ex rel. Ferguson* v. *Schlitz Transfer Co.*, 333 Ill. 333; *People ex rel. Bracher* v. *Vail*, 296 Ill. 61; *People ex rel. Bracher* v. *Abraham*, 295 Ill. 582.) Objectors argue that the record is the order made by the board and the controlling criterion of its action.

However, the record of the action of the board of review is to be found not exclusively, nor even primarily, from such single order, but from the assessment books signed and sworn to by the members of the board of review as required by statute, as well as other written records of the board. (*People ex rel. Greer* v. *Hunt*, 311 Ill. 291; *People ex rel. Bracher* v. *Orcis*, 301 Ill. 350; *People ex rel.*

O'Connell v. *Chicago Tunnel Co.*, 263 Ill. 253.) In the *Orvis* case it is noted that the statute does not require that the minutes of the board be put in evidence showing the vote of each member on its act of equalization on application for judgment of taxes. In the *Hunt* case it was stated that the only record the board is required to keep of its actions is to note what it does on the tax books.

The tax or assessment books introduced in evidence clearly show that, in 1958 and the prior quadrennial, the only real estate classifications used by the board of review were two in number, "lots" and "lands" as heretofore described, and that such classifications covered all real estate in the township. The assessment books also show that neither the assessor nor the board of review had classified real estate in the township as to farm, residential, commercial and industrial classes. The assessment books showed that for the 1958 quadrennial the board of review had increased "lot" assessments by 20% and "land" assessments by 10%. In addition, a written report was made to the Illinois Department of Revenue by the board informing the Department that "lots" had been increased 20% and "lands" 10% in Bruce Township. Taxes could not be extended and collected on the basis of the minutes of the board alone.

The published notice and order entered, in view of the assessment books, do not establish a classification of real estate as contended by appellants but the classification is established by the assessment books. Regardless of the terminology "farm lands" used in the minutes, the significant records of board action, that is, the assessment books, show a determination and decision by the board after notice and hearing to make an increase of assessed values of the two existing classes of real estate for purposes of equalizing assessments. That is to say, the record of the board's

action shows that it has equalized the assessment of real estate by increasing the assessment of all classes included therein, at different rates, as empowered by statute, after giving the required and jurisdictional notice of a proposed increase and holding a public hearing thereon.

Finally, appellant urges that the increase in assessments made by the board of review actually amounts to increases in individual assessments without notice or opportunity to be heard and thereby deprives the taxpayer of her property without due process of law. The argument advanced on such point is as follows: the raise in assessments was not a uniform raise of all of the property in Bruce Township, it was not a raise of all of the property of a particular class, different properties of the same type and similarly situated were raised by different percentages, consequently the board made individual raises on various properties without an opportunity to each property owner to be heard on each raise. From what has heretofore been said it is apparent that such argument is not well taken. The board had statutory power and jurisdiction to enter an order for a horizontal increase in assessed values by class pursuant to statutory notice properly given; the classification of real estate into "lots" and "lands" for the purpose of applying a different per cent increase to each was not arbitrary nor capricious and did not violate the uniformity requirements of the constitution; and the action taken by the board in applying the increases was not at variance with the board's order and determination. The premises of appellant's argument on this point being fallacious, the conclusion drawn therefrom is fallacious; the principles of law set forth in the cases cited by appellant are sound and valid but inapplicable. A proper notice having been given and hearing held on the horizontal increase no violation of due process was had.

Appellant has continually emphasized and asserted that parts of the same property were raised by different percentages by the multipliers and that properties of the same type situated only blocks apart and similar in use were subjected to different percentage increases. The simple answer thereto is that all of the compared properties are either classified as "lands" which were reduced by the assessor 10% or as "lots" which were reduced by the assessor 20%, and in order to equalize them it was necessary for the board of review to raise them in the same proportion. Had the reduction made by the assessor been allowed to continue, the uniformity established by the final assessed valuation for 1957 after application of the county multiplier would have been completely destroyed. Invalidation of the township multipliers as asked by appellant in this case would result in inequality and lack of uniformity. Owners of "lands," as compared to owners of "lots," would find themselves in a position where their property was assessed at a greater proportion of its fair, cash value than was the property of those owners of "lots" in the same township. This would result in the very lack of uniformity which must be established in order to prevail in a tax objection proceeding. In order to maintain such uniformity as was established in 1957 it was the duty of the board of review under the Revenue Act to reverse the unequal or discriminatory changes made by the local assessor of Bruce Township.

From what has heretofore been said, the county court of La Salle County properly overruled the tax objections to the township multipliers applied in Bruce Township for 1958, and its judgment is affirmed.

Judgment affirmed.

APPENDIX B

Judgment of the Supreme Court of Illinois, entered May 19th, 1961.

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, now in the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the County Court of LaSalle County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 13 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1961

No. 321

IVA LUX,

Petitioner,

vs.

PEOPLE EX REL. HARLOW MILLER, COUNTY TREASURER AND EX OFFICIO COUNTY COLLECTOR OF LASALLE COUNTY, ILLINOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

WILLIAM ZWANZIG,
First National Bank Building,
Ottawa, Illinois,
Attorney for Respondent.

ROBERT E. RICHARDSON,
State's Attorney,
LaSalle County,
Ottawa, Illinois,

JOSEPH E. LANUTI,
Assistant State's Attorney,

Both of Counsel.

Printed by EXPRESS PUBLISHING CO., 1003 Second St., Shabbona, Illinois, Telephone 4-1141

INDEX

PAGE

Statement of the Case 1

Argument 4

Conclusion 19

Table of Authorities

Cases

Bi Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441, 36 Sup. Ct. Rep. 141, 60 L. Ed. 372 .. 5

Fromkin v. State, 158 Neb. 377, 63 N.W. 2d 332 ..... 6, 9

Hossach, Assessor v. The Kane County Board of Review, 21 Ill. 2d 10, 170 N.E. 2d 591 6

People v. Board of Review of Cook County, 290 Ill. 467, 125 N.E. 274 ..... 14, 18

People ex rel. Lunn v. Chicago Title and Trust Co., 409 Ill. 505, 100 N.E. 2d 578 ..... 6, 9, 13

People v. Chicago Tunnel Company, 263 Ill. 253, 104 N.E. 1016 6

People v. Hunt, 311 Ill. 291, 142 N.E. 522 6

People v. Olympia Fields Country Club, 374 Ill. 104, 28 N.E. 2d 109 13

People v. Orvis, 301 Ill. 350, 133 N.E. 787 ..... 6, 9

People v. Pickard, 377 Ill. 610, 37 N.E. 2d 330 12

People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E. 2d 273 14

People v. Southwestern Telephone Co., 377 Ill. 303, 36 N.E. 2d 362 12

People ex rel. Tennyson v. Texas Company, 406 Ill. 120, 92 N.E. 2d 142 14

People v. Wasson Coal Co., 403 Ill. 30, 85 N.E. 2d 182 14

State v. Local Board of Review, 225 Ia. 855, 283 N.W. 87 ..... 6, 10

Statutes

PAGE

Ill. Rev. Stat. 1957, Chap. 120, par. 501, Vol. 2, Page 1371 5

Ill. Rev. Stat. 1957, Chap. 120, par. 589 (5), Vol. 2, Page 1386 ..... 4, 9, 15

Ill. Rev. Stat. 1957, Chap. 120, par. 590, Vol. 2, Page 1387 ..... 8, 17

Ill. Rev. Stat. 1957, Chap. 120, par. 591, Vol. 2, Page 1387 ..... 8, 17

Ill. Rev. Stat. 1947, Chap. 120, par. 501, Vol. 1, Page 2814 13

Ill. Rev. Stat. 1947, Chap. 120, par. 589 (5), Vol. 1, Page 2828 13

IN THE

Supreme Court of the United States

October Term, 1961

No. 321

IVA LUX,

Petitioner,

vs.

PEOPLE EX REL. HARLOW MILLER, COUNTY TREASURER AND EX OFFICIO COUNTY COLLECTOR OF LASALLE COUNTY, ILLINOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

STATEMENT OF THE CASE

In 1957, the last year of the Quadrennial Period which began in 1954, the Department of Revenue of the State of Illinois certified a multiplier of 1.0989 which also applied to all property within the County of LaSalle, under general powers of equalization in effect this being approximately 10% increase. After the imposition of said multiplier, the total assessed valuation of property in LaSalle County was considered to be on a par with other counties in the State (Exh. 12, Rec. 87-101). In the year 1958 for the start of quadrennial 1958 through 1961, the Township Assessor of

Bruce Township reduced the final equalized figures of 1957 which were obtained by use of the State multiplier on 4,690 "lots" by approximately 20%. There were 1,482 "lots" which were not so reduced by the Township Assessor which from a study of Exhibits Nos. 1, 2, and 3 (Rec. 79) indicated that the vast majority were vacant "lots" with small valuation. So that in effect all the "lots" which had substantial valuation were reduced by 20% or more. People's Exhibits 1, 2, and 3 show that the Assessor in his books has distinguished certain parcels therein which were referred to as "lots" and which are included in the "lots" book of the Assessor and those which he distinguishes in said Exhibit as "lands" which are in the "lands" book of the Assessor.

As to those parcels contained in the "lands" book, 249 were reduced by 10% or more and 74 thereof were not reduced for the reason that they had been sub-divided in the meantime and consequently had changed from vacant "land" to improved "lots".

In addition thereto, the Assessor's books being People's Exhibits 1, 2, and 3 (Rec. 79) did vary in part from the Assessor's original 1957 books because during the quadrennial 1954 through 1957 improvements were made on existing structures or with new construction and thus their value enhanced or the same reduced by fire or demolition and value reduced.

But in general, the Assessor for Bruce Township reduced the value of "lands" by approximately 10% and the value of "lots" by approximately 20% when compared with the equalized assessed valuation of "lands" and "lots" as equalized by the multiplier by the Department of Revenue. The total assessed value of "lands" after the State Multiplier was applied in the year 1957 was $4,944,850.00 (Rec. 52). The Assessor's valuation of same "lands" was $4,518,-570.00 for the year 1958 (Rec. 53) being basically a 10%

reduction between the two years.

As to the "lots" the 1957 total equalized valuation was $34,770,390.00 (Rec. 53) and the 1958 Assessor's figure as to "lots" was $28,770,390.00 (Rec. 53) being a decrease in valuation of approximately 20%. New construction and improvements were added on to the Assessor's books in the year 1958 not listed in the valuations as equalized by the Department of Revenue in 1957. The figures of the Assessor for the quadrennial years 1958 through 1961 as modified by the Supervisor of Assessments was published in the Streator Daily Times Press (Rec. 8). After individual complaints had been filed and heard by the Board of Review and changes passed thereon had been made, then this additional action was taken by the Board of Review wherein it published a notice in the Streator Daily Times Press. Providing among other things that they proposed to raise the assessments of all real estate by using a multiplier of 1.20 (People's Exh. 5-c, Rec. 54). The first publication being on March 25, 1959, with the hearing being held on April 13, 1959, at 10:00 A.M. Approximately 50 people were present with legal counsel (Rec. 56). After the hearing, the Board of Review agreed that all "Farm Lands" be increased 10% and all "lots" be increased 20% (Rec. 56). On May 12, 1959, the Board of Review of La-Salle County submitted a written report on equalization of local assessments to the Department of Revenue of the State of Illinois (Exh. 5-g, Rec. 57). This report indicated that the Board of Review changed the assessment valuation of "lands" in Bruce Township by increasing the same by 10% as shown in the "lands" book (Exh. 1). That they changed the assessment valuation of "lots" in Bruce Township by increasing the same by 20% (Exh. 2 and 3). Francis Duncan, who was a member of the Board of Review, testified that the Board of Review understood "farm land" to mean lands as set forth in the Assessor's books.

The extension of the increase by the multiplier was carried out in part by the County Clerk's Office under the instructions of the Board of Review (Rec. 49). After said extension of taxes, the Board of Review affixed their affidavit to the Assessor's Books (People's Exh. 5-H and also Exh. 1, 2, and 3, Rec. 57).

In regard to the Owens Illinois Glass Company factory or property the Board of Review made a mistake in computation (Rec. 77). The mistake having occurred after the individual complaint was made and heard, and it was to be reduced similar to like property reduced by Adam Crone the Assessor, which he had not done on this particular piece, which the Clerk of the Board of Review failed to do and the multiplier was applied to the original figure which was in error. Then after the application of the township multiplier, the assessment of the Board of Review is as set forth. That result being that this property was finally assessed comparable to the assessment of 1957 after the application of the Department of Revenue multiplier in that year.

ARGUMENT FOR DENYING THE WRIT

I.

Proper notice and an opportunity to be heard, as required by due process of law, was given before an increase in assessment was made.

The statutory authority for the action of the Board of Review herein is contained in Chapter 120, Paragraph 589, Illinois Revised Statutes of 1957, which provides as follows:

> "In Counties containing less than 500,000 inhabitants, the Board of Review shall in any year, whether the year of the quadrennial assessment or not:
>
> • • • • •

"(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein, if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, *but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have published a notice in a newspaper of general circulation published in the county, of such proposed increase* and shall have given the owners of the property affected, or any one representing them, or other citizens of said territory, an opportunity to be heard within 20 days after the date of such publication. * * *"

As stated therein before a horizontal increase in taxes or a debasement thereof can be made a published notice must be given to the taxpayers 20 days prior to the hearing date.

In the instant case, the Board of Review did publish a notice of the proposed increase; this notice was directed to all property owners in Bruce Township (Exh. 5 c, Rec. 9). The notice required in this type of proceeding is by publication and not individual notice to each taxpayer separately. Notice of this type has been approved by this Court as shown by *Bi Metallic Investment Co. v. State Board of Equalization,* 239 U.S. 441, 36 Sup. Ct. Rep. 141, 60 L. Ed. 372, to be in conformance with due process of law.

The action of the Board of Review was a horizontal increase of taxes by different classifications which classifications were properly made. In the first instance the Revenue Act of Illinois (Ill. Rev. Stat. 1957, Chap. 120, par. 501) refers to tracts and lots for the valuation of real property. This is directed to the assessor who makes the

original assessment. There is nothing in the statutes that indicates the Board of Review cannot follow the same classifications. As Exhibits 1, 2, and 3 clearly show it is the manner in which the assessor set up his original assessment. Such classifications have been held not to be arbitrary or capricious by the Supreme Courts of different States. See *Hossach, Assessor* v. *The Kane County Board of Review,* 21 Ill. 2d 10; *People ex rel. Lunn* v. *Chicago Title and Trust Co.,* 409 Ill. 505; *State* v. *Local Board of Review,* 225 Ia. 855, 283 N.W. 87; *Fromkin* v. *State,* 158 Neb. 377, 63 N.W. 2d 332.

The order entered by the Board of Review is to be determined from its complete records. When the typewritten entry was made as to "farm lands" and "lots", "farm lands" was meant as "lands" as shown by the testimony of Francis Duncan, who was a member of the Board of Review, who said that the Board of Review understood "farm land" to mean "lands" as set forth in the assessor's books.

What constitutes the records and what do they show? The petitioner infers that the "record" in the instant case is the purported minute order as shown by Exh. 5-f, but this is not so. The records of the Board of Review include the assessment books, and, as a matter of fact, are the main records of the Board of Review.

As the court stated in *People* v. *Hunt,* 311 Ill. 291:

> "The only *record* the Board of Review is required to keep of its actions in determining whether property shall be assessed against a party, is to note what it does on the tax books."

Again the court stated in *People* v. *Chicago Tunnel Company,* 263 Ill. 253:

> "The *record* of the decision of the Board upon a hearing for the purpose of modifying an assessment is made by entering it upon the *assessment books,* and

that which the Board decided to do must be determined by the *record* made by it."

In *People* v. *Orvis*, 301 Ill. 350, the Supreme Court stated:

> "It is also objected that the record does not show a compliance with the statute with reference to such equalization. The record shows in this case that the Board of Review made a horizontal raise of thirty per cent on all lands and improvements in the city of Waukegan, and a fair construction of the minutes of the board is that the action was taken in accordance with the statute. *The record shows the change on the assessment books* in accordance with section 37 of the act. * * * While the record in this case does not affirmatively show the vote of the board on the matter of the raise in question, *all members thereof made the required affidavit attached to such assessment when completed,* and it cannot be doubted that the requirement of the statute, that such raise shall be concurred in by a majority of the board, was met. The statute does not require, in an application for judgment for taxes, that the minutes of the board be put in evidence showing the vote of each member on its act of equalization."

A reading of the foregoing cases makes it abundantly clear that the *record* made by the Board of Review consists primarily of the entries in the assessment book, and the signing and swearing to the same by the members of the Board. In the instant case, an additional record was made, in that a written report was made to the Department of Revenue concerning the action taken by the Board. It is significant to note that the last case hereinabove referred to states that it is not required in an application for judgment for taxes that the minutes of the Board be put in evidence. This, and the other cases herein cited, all indicate that the *record* of the decision of the Board is to be made *by entering it in the assessment books.* In the instant case, the entry of the decision in the assessment books was made, which clearly showed, parcel by parcel, an increase of 20% on all lots in Bruce Township, and an in-

crease of 10% on all parcels in the "lands" book of Bruce Township. To make the record complete, it was then reported in writing to the Department of Revenue on May 12, 1959, that this action was taken (Exh. 5-h, Rec. 7), or, in other words, that this was the record that they had made. The significant part of the record that was made by the Board of Review of LaSalle County, herein, was the entry in the assessment books, parcel by parcel, of the action that had been taken, and the signing under oath of the same that these figures were correct, and the further report in writing to the Department of Revenue, again affirming this action. Regardless of the terminology employed to the purported minute order, the actual action of the Board, and official record made of such action, shows clearly that all lots were to be raised 20% and all lands 10%. Further verification of this fact may be found in the extension by the County Clerk based on this record, and the collection by the County Collector based on this record.

It must be conceded without argument that taxes could not be extended and collected on the basis of the minute order, as it was not such an official record of the Board's action as to support the levy of taxes. Such minute order is, in fact, so insignificant a part of the record that it need not be shown to make out a prima facie case upon an application for judgment and sale for taxes. Regardless of what may be written in such a minute order, the entry in the assessment book is the official action of the Board, and is the action and record thereof which supports the tax. This is in accordance with the directions contained in Paragraphs 590 and 591 of Chapter 120, Illinois Revised Statutes.

Since this was a horizontal increase case, a published notice was given. No individual notices were required. As can be seen by the instant action 1600 individual notices and hearings would have prevented the Board from ever

completing its work during the time allotted therefor and in time for the taxes to be levied for the year involved. Because of such cases the legislative body has properly provided for a horizontal increase in taxes for certain areas and certain classes. Such was the procedure followed by this Board of Review and approved by the Supreme Court of Illinois. See *People* v. *Orvis*, 301 Ill. 350; *People ex rel. Lunn* v. *Chicago Title and Trust Co.*, 409 Ill. 505. Since there was proper notice given the cases cited by the petitioner were complied with by the Board of Review.

The action of the Board of Review resulted in all the property being treated equally and uniformly. It is clear from reading Chapter 120, Section 589 (5) that it is mandatory upon the Board of Review to either increase or reduce the assessment of all real, or of all personal, or both, or of any class included within real property or personal property, if it does not consider that the assessment is proper. If real property or personal property is divided into classes and an increase or reduction applied to such class, then, of course, the classification so established must be a reasonable one, and not arbitrary or capricious. It might be in order to review the authorities which have dealt with the subject of classification for valuing property for taxation.

In *Fromkin* v. *State* (a Nebraska case), 63 N.W. 2d 332, the State Board was given power very similar to that of the LaSalle County Board of Review in the instant case, to "increase or decrease the assessed valuation of real or personal property of any county or tax district * * *, to increase, or decrease the assessed valuation of any class, classes or kinds of property, personal, real, or mixed in any county or tax district * * *."

In the exercise of this power, the Board fixed the actual value of "Lands and improvements", and compared it with the assessed value thereof. The Board increased the

assessment of "Lands and improvements" by 20%, and that of "Lots and improvements" by 48%.

The above action of the State Board was upheld by the Supreme Court.

It will be seen that the classification in the above case was identical with the classification in the instant case, and different percentages of increase were applied to each classification as in the instant case.

In *State* v. *Local Board of Review*, 225 Ia. 855, 283 N.W. 87, the local assessor in the city of Des Moines debased the values of real estate by different percentages according to location within the city, based upon an arbitrary division of the city by the assessor. The Iowa State Board of Assessment and Review ordered the local authorities to increase or reduce the assessments made in the various districts of the city by different percentages in order to equalize the same. The powers of the Iowa State Board of Assessment and Review were almost identical to those granted by the Illinois statutes to the LaSalle County Board of Review in the present case. The pertinent sections of the Iowa statute read: "To * * * raise or lower the valuation of the property, real or personal, in any township, town, city or taxing district, to * * * raise or lower the valuation of any class or classes of property in any township, town, city or taxing district * * *."

It was claimed that this order resulted in a new or original assessment and thus was beyond the power of the Board. The Supreme Court said:

> "The order * * * is a determination that the scheme of valuation * * * resulted in many inequalities in the valuation of all property in each of the sectional areas where * * * unequal percentages were applied to the appraised and computed values. The inequalities were due to the application * * * of a rule in fixing assessable values whereby the location of certain prop-

erty * * * was the sole test as to whether that item was to be valued at 50%, or 75% of the appraised value of the site * * * or some other percentage basis arbitrarily selected for all real estate in that zone. The State Board determined that this method resulted in discrimination and that such assessment so arrived at was erroneous and lacked uniformity.

"It is our conclusion that the facts disclosed by the evidence in this case were amply sufficient to give the State Board of Review jurisdiction to order the correction of such discriminations as they determined were the result of the unjust action taken by the City Assessor.

"The order here made was not equivalent to a new or original assessment nor a revision of individual assessments, but dealt with the aggregate valuation in the several zones. It conformed to and corrected the unequal discounts which it determined had resulted in discrimination, * * * its corrective order was not a reassessment nor was it directed to the individual assessments of individual taxpayers. It merely ordered the pursuance of a uniform mode of valuation for assessments as substitute for the mode it determined led to discrimination in the valuation of all real estate in Des Moines for assessment."

It is interesting to note regarding the above case that action was brought by a number of taxpayers to force the local Board to apply such equalization factor to assessments in Des Moines. In other words, the local Assessor in the Iowa case had applied different percentages in valuing property in different areas of the city of Des Moines. The Iowa State Board of Assessment and Review, under powers almost identical to those of the Board of Review in the instant case, equalized these valuations by applying different percentages to different areas. The taxpayers, in that action, sought to do exactly the opposite of what the taxpayers are doing in the instant case, namely, to force the local Board of Review to apply these equalizing

percentages rather than to allow them to remain valued by different percentages, as had been done by the local Assessor. The Supreme Court ordered the local Board to apply the equalizing factors, and in so doing reversed the lower court who had refused to permit the application of such equalizing factors. It is further interesting to note that some of the same objections were raised in that case that were raised in the instant case, namely, that it would result in the increase of individual assessments, was based on an improper classification, and would result in inequality or lack of uniformity. The Supreme Court of Iowa, in an unanimous opinion, rejected all of these contentions.

In *People* v. *Southwestern Telephone Company*, 377 Ill. 303, the Supreme Court held that the Board of Review could decrease the assessed valuation of real estate in the county by a certain percentage figure, without applying a like percentage figure to personal property; and the court held that this action would not violate the uniformity provisions of the constitution.

In *People* v. *Pickard*, 377 Ill. 610, complaint was made that land and improvements were debased in value at a different percentage of their fair cash value in order to arrive at their assessed valuation. Objector claimed that this destroyed uniformity in taxation, and that thereby Sec. 1 of Article 9 of the State Constitution, and the equal protection and due process clauses of the 14th Amendment to the Federal Constitution were violated. The Supreme Court sustained the overruling of this objection and said:

> "The principle of Law upon which the rule of uniformity in taxation stands does not require that taxing officials, while engaged in the fixing of the full, fair cash value of property, shall adopt the same rules as to all classes of property. They are permitted to exercise their judgment, formulate and apply such rules in the valuing of the various items of property and the classes thereof as will best enable them to arrive at

> the fair cash value of the property which is the subject of assessment. * * * The method of procedure which the taxing officials employ in fixing the fair cash value of property, generally, is not a subject of judicial inquiry if the method and procedure adopted results in a fair valuation being placed on all property so that the burden of taxation will be proportionately distributed according to valuation upon all property in that jurisdiction."

In *People* v. *Olympia Fields Country Club*, 374 Ill. 104, the Supreme Court approved the placing of golf and country club real estate in a different class for assessment purposes than farm lands. The court held this was not an improper classification under Sec. 1 of Article 9 of the Constitution.

In *People ex rel. Lunn* v. *Chicago Title & Trust Co.*, 409 Ill. 505, a case virtually identical to the instant case, the Board of Review made a horizontal increase of lands in the amount of 25%, of lots in the amount of 100%, and improvements in the amount of 50%. The objectors contended that the increases were arbitrary and unreasonable in that the valuation of lands was raised 25% and lots 100%. The court said:

> "The short answer to this is that it was necessary to increase the values of tracts and lots by different percentages in order to make their assessed valuation uniform. Furthermore, sec. 20 of the Revenue Act, (Ill. Rev. Stat. 1947, Chap. 120, par. 501) providing for valuation of real property, refers to tracts and lots, and subparagraph 5 of Sec. 108 (Ill. Rev. Stat. 1947, Chap. 120, para. 589) in authorizing boards of review to increase an entire assessment of real property or an included class, does not impose any limitation upon the classification of real property. The classification of real estate into lands and lots being impliedly authorized by sec. 20, and not prohibited by sec. 108, and being reasonably necessary to equalize the assessment in Warren township, it cannot be said that the action

of the county board in so classifying real estate was arbitrary or capricious."

All of the above cited cases indicate that a classification of real estate into lands and lots, for the purpose of applying a different per cent of increase to each classification, is not arbitrary or capricious, nor does it violate the constitution, nor does it destroy the constitutional requirement for uniformity in taxation. In fact, the cases and the statutes involved make it clear that it is the duty of the Board of Review to take this very action, if, in their opinion, it is necessary that this be done, to equalize the assessment of property in a township.

A perusal of the authorities which deal with the burden cast upon the objectors in a proceeding of this type indicates clearly that the objector must establish that his property was assessed at more than its fair cash value, or that it was assessed at a greater percentage of its fair cash value than other property subject to like taxes. No effort was made in this case to establish, or even to allege, that any of the properties of the objectors herein were valued at more than 100% of their fair cash value, nor was any effort made to prove, or even allege, that any of said properties were assessed at a greater proportion of their fair cash value than that of similar property in other taxing districts, or other properties similarly situated, or of a similar type or character. See *People ex rel. Tennyson* v. *Texas Co.,* 406 Ill. 120, *People* v. *Wasson Coal Co.,* 403 Ill. 30, *People ex rel. Ruchty* v. *Saad,* 411 Ill. 390.

What was the result of the action taken? First of all, the total assessed valuation for 1957, after the application of the multiplier by the Department of Revenue must be considered since that is the final assessment figure for the year 1957. See *People* v. *Board of Review of Cook County,* 290 Ill. 467. This figure, then, must of necessity be assumed to be the proper equalized assessed valuation for the year

1957. As previously stated, in the spring of 1958, the local Assessor of Bruce Township, based upon the final assessed valuation for the year 1957, debased these valuations as to lots in the amount of 20%, and as to lands in the amount of 10%, or approximately so. Stated otherwise, the local Assessor apparently determined, in 1958, that he would value lands on a basis of 90% of their 1957 final assessed valuation, and that he would value lots on a basis of 80% of their 1957 final assessed valuion. It is significant to note, at this point, that had this addition been allowed to exist by the Board of Review, the uniformity which had been established by the final assessed figures for the year 1957 would be completely destroyed by the action of the local Assessor, undertaken a few months later in the spring of 1958. When viewed in this manner, it will at once appear that all owners of lands, as compared to owners of lots, would find themselves in a position where their property was being assessed at a greater proportion of its fair, cash value, than was the property of those owners of lots in the same township. This would have resulted in the very lack of uniformity which the Supreme Court of the State of Illinois has stated must be established in order to prevail in a tax objection proceeding. In order that such uniformity, which had existed in 1957, be restored to Bruce Township, it became the duty of the Board of Review under Ill. Rev. Stat. 1957 Par. 589, subparagraph (5), to reverse the action of the local Assessor by correcting such unequal or discriminatory changes in the 1957 valuations accomplished in the course of the 1958 assessment. To illustrate the practical workings of the procedure as followed by the local Assessor and the Board of Review, let us consider the valuation of the objector Iva Lux, and the changes in valuation of her property. In 1957 the assessed valuation of said objector's lot as finally assessed for the year 1957 was $4180. In 1958, the local Assessor reduced this valuation to $3420. The Board of Review applied an increase of 20%

to all lots, which included said objector's lot, and this raised the valuation of said lot to $4100, which became the final assessed figure for the year 1958. This shows clearly that the objector had a total assessed valuation placed upon her property for the year 1958, after the increase placed thereon by the Board of Review, which was $80 lower than the total assessed valuation she had had for the year 1957. It is felt that this is characteristic, generally, of most of the properties in Bruce Township, as the multiplier applied by the Board of Review, as previously demonstrated, would in most cases not even result in as high an assessed valuation as said property had shown the previous year. The Owens Illinois Glass Factory property which the Board of Review had at individual hearing agreed to grant them a reduction, and in the computation later forgot to do the same, and to which the erroneous figure of the 20% multiplier was added, when this was reduced by the County Court at the hearing thereon, it resulted in it being assessed at approximately 99.8% of the equalized assessed valuation compared with 1957. Whereas, that of the tax objector Iva Lux when increased by the 20% was assessed at approximately 98%, equalized the assessed value of 1957, which shows that the objectors were treated very fairly and equally with said Owens Illinois Glass Company property.

II.

The records of the Board of Review consist of the assessment books, entries therein and affidavit that forms a part thereof.

There is no dispute that the Board of Review is a statutory board and that a record of its actions must be made. However, as has been shown by prior argument and cases cited thereunder in Section I of this brief and argument, the records of the Board of Review include the assessment

books which are the main records of the Board of Review and its actions are noted therein. In so doing compliance is had with Sections 590 and 591, Chapter 120, Illinois Revised Statutes of 1957 which are as follows:

Section 590

"Whenever the board of review in any county containing less than 500,000 inhabitants shall decide to reverse or modify the action of the supervisor of assessments or board of assessors, or county assessor, or the assessment in any case or to change the list as completed, or the assessment or description of any property in any manner, it shall cause the changes to be made at once and entered upon the assessment books."

Section 591

"The board of review in counties containing less than 500,000 inhabitants, shall, on or before the annual date for adjournment as fixed by section 107 of this Act, complete its work and make, or cause to be made, the entries in the assessment books required to make the assessment conform to the changes made therein by the board of review, and shall attach to each of said books an affidavit signed by at least two members of such board, which affidavit shall be substantially in the following form:

State of Illinois)
) ss
County of .....)

We, and each of us, as a member of the board of review of the county of ..... in the State of Illinois, do solemnly swear that the books ..... in number ....., to which this affidavit is attached contain a full and complete list of all the real and personal property in said county subject to taxation for the year ..... so far as we have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property, is, in our opinion, a just and equal assessment of such property for the purposes of taxation according to law, and that the

footings of the several columns in said book are correct, as we verily believe.

Dated ......"

The record of the Board of Review is not limited to the minute order upon which different meanings are placed as petitioner tries to imply, but as to all of its records which clearly spell out what action the Board took when it had the lands book increased by 10% and the lots book by 20%, signed the affidavit confirming it as the action of the Board of Review and sent a letter on May 12, 1959, to the Department of Revenue of the State of Illinois that the Board had increased the valuations 10% in the lands book and 20% in the lots book, and the State's acceptance thereof. All of these actions being required by Statute. For, if the State Department of Revenue does not accept these figures, said department can equalize them as said clearly in *People* v. *Board of Review of Cook County*, 290 Ill. 467:

"Assessments of property for taxation are not complete until equalization by the State Tax Commission (now Department of Revenue) until which time the assessed value of property is not finally determined."

CONCLUSION

When the complete records of the Board of Review are studied, it is obvious that a horizontal increase in taxes was made under the general published notice of a proposed increase. [illegible] was to maintain equality and uniformity in the t[illegible]d action and that total tax base for 1958 was similar to t[illegible]ax base 1957 as equalized by the State Department of Rev[illegible]he year

As shown by the statement of the case, a prope[illegible]r newspaper publication of a horizontal increase in the t[illegible]tax base was given to all taxpayers in Bruce Township. Si[illegible]nce this is a horizontal increase of assessments and not ind[illegible]lividual, due process of law was accorded to everyone.

WHEREFORE, your Respondent respectfully s[illegible]suggests that the Petitioner's Petition for Writ of Certi[illegible]orari be denied.

Respectfully submitted,

WILLIAM ZWANZIG,
Attorney for Resp[illegible]ondent.

ROBERT E. RICHARDSON,
JOSEPH E. LANUTI,
Both of Counsel.